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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	MM Docket No. 98-43
Streamlining of Mass Media	)	
Applications, Rules, and Processes	)	
	)	
Policies and Rules Regarding	)	MM Docket No. 94-149
Minority and Female Ownership of	)	
Mass Media Facilities	)	

**Comments In Support Of Motion For Stay**

Mojave Broadcasting Company ("Mojave"), a wholly-owned subsidiary of Meridian Communications Company ("Meridian") and the permittee of KMCC (TV), Channel 34, Lake Havasu City, Arizona, by its attorneys, hereby submits its comments in support of the "Motion For Stay, or in the Alternative for Waiver or 'Tolling'" filed May 12, 1999 by W. Russell Withers, Jr. ("Withers") in the above-captioned proceeding.

Like Withers, Mojave filed a timely Petition for Reconsideration of the Commission's Report and Order, FCC 98-281, released November 25, 1998,<sup>1</sup> which, inter alia, amended Section 73.3598 of its rules to increase to three years the time permitted for completion of construction of new or changed television and radio broadcast station facilities and to modify the procedures for obtaining extensions of construction permits for such facilities. As set forth in its petition, Mojave supports the Commission's determination to issue all future construction

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<sup>1</sup> The Commission's Report and Order was published in the Federal Register on December 18, 1998. 63 Fed. Reg. 70040.

permits for a uniform three-year term and to extend the initial term of outstanding permits to three years. Whatever merit the new and more limited standards announced in the Report and Order for “tolling” of the construction period may have as applied to permits to be issued in the future, however, Mohave agrees with Withers that they should not be applied retroactively in a manner that will prejudice the holders of existing permits who have reasonably relied upon the Commission’s policies previously in effect. Accordingly, Mojave strongly supports Withers’ request that the Commission stay the expiration of existing construction permits for new broadcast stations, issued prior to the adoption of the Report and Order, pending the Commission’s decision dealing with the petitions for reconsideration filed by Withers, Mojave, and other parties with respect to these changes in Section 73.3598(3).

As the Commission’s records will reflect, the original construction permit for KMCC was issued to Meridian on May 1, 1996, following the settlement of a comparative licensing proceeding. Subsequently, on July 30, 1997, the permit was assigned to Mojave as part of a pro forma corporate reorganization. See File No. BAPCT-970618IL. In the interim, however, Meridian had filed a Petition for Rulemaking requesting change in the city of license of KMCC from Lake Havasu City, Arizona, to Laughlin, Nevada. Although the rulemaking petition was filed shortly after the KMCC construction permit was granted, it has been delayed for nearly three years because of the pendency of the Commission’s proceedings to implement digital television (“DTV”) operations. Indeed, not until April 9, 1999 did the FCC issue a Notice of Proposed Rulemaking (DA 99-630) to reallocate Channel 34 to Laughlin, Nevada and modify KMCC’s authorization accordingly. Comments on the proposal are due on May 31, 1999, and reply comments on June 15, 1999.

As explained in more detail in Mojave's Petition for Reconsideration, in view of the uncertainties associated with the status of its request for change in the station's city of license, the intervening assignment of a paired DTV channel, and the more recent substitution of a different DTV channel for use by KMCC, the permittee has not been in a position to move forward with equipment purchases, installation, or construction of the station. In view of the delay in FCC action on its rulemaking petition, Mojave filed an application for extension of its outstanding construction permit on April 11, 1998. That application demonstrated that, although Mojave desires to move ahead as soon as possible on construction of the KMCC facilities, it is impractical and inefficient for the permittee to proceed with ordering equipment or physical construction of the station until the Commission has concluded the rulemaking proceedings with respect to Mojave's petition reallocation request.

The Commission found the reasons stated in Mojave's extension application sufficient under the then-current standards and, on July 22, 1998, granted Mojave a first extension of its construction permit for KMCC, until January 22, 1999. Unfortunately, in the intervening months the pendency of further reconsideration proceedings and appeals with respect to the FCC's DTV decisions continued to impede the processing of Mojave's Petition for Rulemaking. Accordingly, on December 18, 1998, Mojave filed an application for a second six-months' extension of its construction permit. That application was granted on February 11, 1999, giving Mojave until August 11, 1999, to complete construction of the new station.

Thus, the Commission already has found the pendency of Mojave's rulemaking petition and the FCC's inability to complete processing it to be sufficient under the previous "one-in-three" criteria to justify extension of the KMCC construction permit. See Report and Order at ¶ 77. Mojave is optimistic that the Commission will be in a position to act on the long-

pending rulemaking proceeding shortly after the close of the comment period, but the timing of that action remains beyond Mojave's control.

Under the Commission's rules and policies previously in effect, Mojave had every reasonable expectation that its construction permit would be extended pending completion of the reallocation proceeding. If strictly construed, however, the rules and policies announced in the Report and Order could have the effect of limiting Mojave to a period of just a few more months in which to complete construction -- even though Mojave (then Meridian) filed its rulemaking petition only two months into its initial term, has prosecuted that petition diligently, and reasonably relied upon the Commission's existing extension policies in deferring the costly construction process until the FCC takes some action on its nearly three-year-old rulemaking request. Mojave has repeatedly made clear, moreover, that it stands ready to proceed promptly with construction of the new station as soon as the Commission acts on its reallocation proposal. The public interest clearly would not be served by arbitrarily limiting Mojave to a predetermined period of time to complete construction and aborting the rulemaking proceeding to improve the facilities and long-term prospects for viability of KMCC before the Commission has addressed Mojave's petition on its merits.

Thus, on reconsideration, Mojave submits that the Commission should clarify that it will not apply the new rules and tolling standards in a manner that would effectively foreshorten the usable construction period for permittees -- like Mojave -- who relied upon the Commission's existing extension policies with respect to construction permits already outstanding at the time the Report and Order was adopted. Rather, as was originally

contemplated in the April 3, 1998 Notice of Proposed Rulemaking in this proceeding,<sup>2</sup> the Commission should continue to apply the extension policies previously in existence to outstanding permits, including in particular those that are already outside their initial 18 or 24-month construction periods. Alternatively, the Commission may wish to expand the range of acceptable "tolling" circumstances for existing permit-holders to cover matters that previously were deemed to justify extensions. In any event, the agency should make clear that it will retain the flexibility, on a case-by-case basis, to take into account unusual circumstances created by implementation of the new rules and the reasonable expectations of permit-holders who have relied upon the existing rules and extension policies in formulating their plans with respect to the schedule for construction of new or modified facilities.

However, until the Commission acts on reconsideration to clarify the standards for tolling or extensions of construction permits that predate the February Report and Order, Mojave, Withers, and others among the approximately 29 parties who sought reconsideration of the changes in Section 73.3598(e) remain in jeopardy of irreparable harm -- in the form of the loss of their prior investments in reliance on the Commission's long-standing policies and possible foreclosure of the opportunity to complete construction before the expiration of an arbitrary and retroactively imposed deadline. Accordingly, Mojave strongly supports Withers' request that the Commission stay the effectiveness of the draconian three-year outside limit on time for construction and, on reconsideration, clarify or modify the standards for tolling or extension under Section 73.3598(e) to enable Mojave and other permittees similarly situated to complete the construction process in an orderly fashion, consistent with the standards in effect

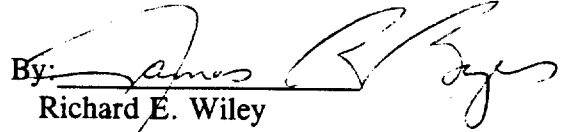
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<sup>2</sup> FCC 98-57, released April 3, 1998.

at the time their permits were issued. By doing so, the Commission can avoid inequity in the implementation of new rules of which such permittees had no notice prior to the commencement of this proceeding, and further the public interest by enabling the holders of pre- Report and Order construction permits to bring their stations on-line, without the threat of forfeiture that would not have existed under the Commission's policies as heretofore in effect.

Respectfully submitted,

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May 25, 1999

### **CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing "Comments In Support Of Motion For Stay" were served by first-class United States mail, postage prepaid, on the 25<sup>th</sup> day of May, 1999, upon the following:

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